
(2012) 07 CHH CK 0048
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 2453 of 2012

Natthulal Jaiswal

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 10-07-2012

Acts Referred:

Citation : (2012) 3 MPJR 74

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Sameer Behar, for the Appellant; Arun Sao, Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Satish K. Agnihotri, J.—Notice to the respondents is dispensed with, as Shri Sao, learned Govt. Advocate, appears on behalf of the State/respondents. With the consent of the parties, the matter is heard finally.

2. Challenge in this petition is to the order dated 08.04.2010 (Annexure P-1), whereby, the Divisional Forest Officer, Korba, found that there was an embezzlement to the extent of Rs. 85,733/-, on account of the fact that when the petitioner was working in Forest Range, Nistar Depot, Tilkeja, there was a loss of 137 pieces of wooden poles and in Nistar Depot, Bhaisma, there was a loss of 160 Quintal fire woods and also the order dated 17.02.2012 (Annexure P-2), whereby, the order passed by the Divisional Forest Officer was confirmed in appeal by the Conservator of Forest.

3. The facts, in nutshell, are that the petitioner working as Deputy Ranger was posted in Nistar Depot, Tilkeja and Nistar Depot, Bhaisma, thereafter, he was transferred. One Kashiram Netam was posted in his place on transfer and at the time of handing over the charge, it was found that 137 pieces of wood poles weighing 384.280 quintal, was missing. A show cause notice was issued to the petitioner on 08.12.2009 (Annexure P-3) giving the details of the inspection,

proposing imposition of penalty under the provisions of Rule 10(3) & (4) of the Chhattisgarh Civil Services (Classification, Control & Appeal) Rules, 1966 (for short "the Rules; 1966"). The petitioner filed his response to the said notice on 13.03.2010 (Annexure P-4).

4. After having considered all the facts of the case, the Divisional Forest Officer, came to the conclusion that there was a loss to the extent of Rs. 61,837/- in Nistar Depot Tilkeja and Rs. 23,896/- in Nistar Depot Bhaisma, in total 85,733/-. Accordingly, the order of recovery to the said amount was passed by the impugned order dated 08.04.2010. In the meantime, the petitioner retired from service on 30.04.2010, without making payment of the penalty amount imposed by way of minor penalty on the petitioner.

5. Shri Behar, learned counsel appearing for the petitioner submits that this recovery cannot be made, as the petitioner has retired on 30.04.2010 and recovery from the retiral benefits is prohibited under Rule 9 of the M.P./ C.G. Civil Services (Pension) Rules, 1976 (for short "the Pension Rules, 1976"). Shri Behar, further submits that the impugned order was not passed by the competent authority, thus, the order is vitiated and the competent authority i.e. disciplinary authority is Conservator of Forest, therefore, under Rule 10(3) & (4) of the Rules, 1966, the recovery cannot be made.

6. On the contrary, Shri Sao, learned Govt. Advocate, submits that Rule 12(3) of the Rules, 1966, clearly provides that the penalty under Rule 10(3) can be imposed by any other authority subordinate to the appointing authority. If the Conservator of Forest is the appointing authority but the Divisional Forest Officer, being subordinate authority can very well imposed minor penalty under Rule 12(3) of the Rules, 1966.

7. Shri Sao, further submits that procedure prescribed for imposition of minor penalty is under Rule 16 of the Rules, 1966, which provides for issue of show cause notice, not a detailed enquiry, as provided in case of major penalty and admittedly, the show cause notice was issued and detailed reply was filed. After having considered all the aspects of the matter, the impugned order of recovery was passed. Thus, the order is just and proper, does not warrant interference.

8. Having considered rival submission of learned counsel appearing for the parties, perused the pleadings and documents appended thereto, it is evident that a show cause notice was issued, as required under the provisions of Rule 16 of the Rules, 1966 and a detailed reply was filed by the petitioner. The Divisional Forest Officer, who is subordinate to the Conservator of Forest, having examined the reply, came to the right conclusion that recovery to the tune of Rs. 85,733/-, for loss of wooden poles during his service period, was ordered, which appears to be just and proper.

9. Rule 10(iii) of the Rules, 1966, provides for imposition of minor penalty and for recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of order. This is a case, which

falls within the category of recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of order.

10. Rule 65 of the Pension Rules, 1976, clearly provides that (1) it shall be the duty of every retiring Government servant to clear all Government dues before the date of his retirement. (2) where a retiring government servant does not clear the government dues and such dues are ascertainable: (a) an equivalent cash deposit may be taken from him; or (b) out of the gratuity payable to him, his nominee or legal heir, an amount equal to that recoverable on account of ascertainable Government dues shall be deducted. It appears that in exercise power under Rule 65 of the Pension Rules, 1976, since the amount was not paid or the cash was not deposited, the authorities have taken steps to recover from his pensionary benefits. The petitioner may deposit the amount by cash and thereafter, the State may settle the retiral dues, in accordance with law.

11. The contention of learned counsel for the petitioner that the Divisional Forest Officer, is not appointing authority or disciplinary authority to impose any penalty including the minor penalty deserves to be rejected. Rule 12(3) of the Rules, 1966, which is a non-obstante clause, provides that except major penalty, as enshrined in clause (v) to (ix) of Rule 10, any authority subordinate to the appointing authority can impose the minor penalty. The Divisional Forest Officer is immediately subordinate to the Conservator of Forest, who according to the petitioner, is a competent authority i.e. disciplinary authority. Further, the appointing authority, has also confirmed the order in appeal. Thus, the order passed by the Sub Divisional Officer cannot be held as flawed.

12. In view of foregoing, no infirmity or illegality is noticed in the entire proceeding before passing the impugned order and, as such, this Court refrain itself from interfering with the order, which is just and proper in the impugned order. Accordingly, the writ petition is bereft of merit and is hereby dismissed at the motion stage itself.